

Tentative Rulings for May 11, 2022
Department 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

18CECG03191	<i>Flowe v. West Coast Chassis, LLC</i> is continued to Wednesday, June 8, 2022, at 3:30 p.m. in Department 503.
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Tentative Rulings for Department 503

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(03)

Tentative Ruling

Re: **Luna v. Rodriguez**
Superior Court Case No. 19CECG04266

Hearing Date: May 11, 2022 (Dept. 503)

Motion: Defendant's Motion for Terminating Sanctions against Plaintiff Juan Luna

Tentative Ruling:

To grant defendant's motion for terminating sanctions against plaintiff Juan Luna, as plaintiff has willfully refused to comply with this court's order compelling him to respond to discovery. (Code Civ. Proc., §§ 2023.010, subd. (g); 2030.290, subd. (c); 2031.300, subd. (c).) To strike plaintiff's complaint and dismiss the action against defendant Ittai Hernandez Rodriguez. To order plaintiff to pay additional monetary sanctions of \$435 to plaintiff's counsel, Miller & Ayala, LLP, within 30 days of the date of service of this order. (Code Civ. Proc., § 2023.010.) Defendant shall submit a proposed judgment consistent with the court's order within 10 days.

Explanation:

Code of Civil Procedure section 2023.010, subdivision (g) makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc., §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 495; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc., § 2023.030, subd. (d).)

Here, on October 19, 2021, the court ordered plaintiff to serve verified responses to the discovery requests within 10 days of the court's order, as well as to pay \$435 in monetary sanctions to defendant within 30 days. The court's order was served on plaintiff by mail on October 19, 2021. However, plaintiff never served verified responses to any of the discovery requests within 10 days, nor has he paid the monetary sanctions as ordered, despite the passage of more than 30 days since the order was served on him.

Therefore, it appears that plaintiff is willfully refusing to comply with the court's order compelling him to answer the discovery requests, as well as the order to pay

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: KAG on 5/6/2022.
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: **Trujillo v. Flores**
Superior Court Case No. 21CECG00981

Hearing Date: May 11, 2021 (Dept. 503)

Motion: Defendants' Motion for Attorney's Fees and Costs

Tentative Ruling:

To grant the motion for attorney's fees in the amount of \$35,720; to also award costs of \$1,544.68.

Explanation:

A "prevailing defendant" on the motion to strike "shall be entitled" to recover his or her attorney fees and costs. (Code Civ. Proc., § 425.16, subd. (c).) As the California Supreme Court has emphasized, "any SLAPP [(strategic lawsuit against public participation)] defendant who brings a successful motion to strike is entitled to mandatory attorney fees." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131.)

Attorney's Fees

While plaintiff has not filled an opposition to challenge the amount of fees to be awarded, the court may only award a reasonable fee. (*Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.) Accordingly, the court reviews the reasonableness of the fees requested.

The Lodestar

The lodestar method is used to compute an attorney fee award under the anti-SLAPP statute. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 491.) A lodestar is based on the " 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case.' " (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Here, defendants seek a loadstar of \$60,710.00.¹ As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate. . . ." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses, supra*, 24 Cal.4th at p. 1134.) The lodestar adjustment method "'is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.'" (*Serrano III, supra*, 20 Cal.3d at p. 48, fn. 23.)

¹ Defendants also seek an additional estimated \$2,600 to review an opposition, prepare a reply, and appear at a hearing. Since this motion is unopposed, these anticipated fees will not be awarded.

Number of Hours Reasonably Expended

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) While an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 950.)

Time Not Related Solely to the Special Motion to Strike

Although attorney fees to a prevailing defendant are mandatory under Code of Civil Procedure section 425.16, that party is only entitled to seek fees and costs incurred in connection with the anti-SLAPP motion itself, and is not entitled to an award of attorney fees and costs incurred for the entire action. (*Wanland v. Law Offices of Mastagni, Holstedt & Chiurazzi* (2006) 141 Cal.App.4th 15, 21; *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1383.) For example, a fee award under the anti-SLAPP statute may not include: obtaining the court docket, attacking service of process, preparing and revising an answer, summary judgment research, preparation of a press release, strategy conferences, or attending a mandatory settlement conference because such fees "would have been incurred whether or not [the defendant] filed the motion to strike." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325.)

Here, 3.2 hours were spent investigating the basis of the lawsuit, i.e. reviewing defendants' contacts and communications with plaintiff and communicating with plaintiff's counsel regarding counsel's conclusions. This initial factual investigation and communication would have been undertaken even if an anti-SLAPP had not been filed. Accordingly the .4 hours billed on May 24, 2021 for "correspondence with client Sumler," the .10 hour billed on May 31, 2021 for "correspondence with client re communications with opposing counsel," the 1.1 hours billed on June 21, 2021 for "review of client Flores' communications with defendant," and the 1.6 hours billed on June 21, 2021 for "review of client Sumler's communications with defendant" are not recoverable under section 425.16, subdivision (c).

Excessive Fees

"Counsel for the prevailing party should make a good-faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary" (*Hensley v. Eckerhart*, *supra*, 461 U.S. at p. 434, citing *Copeland v. Marshall* (1980) 641 F.2d 880, 891 (en banc).) The court has identified a few billing entries which are excessive of their face.

Some of these time entries relate to overbilling simple tasks, leading the court to conclude that administrative time is included. Specifically, the time entries for August 4, 2021 -- .3 hours for "review Court order continuing Anti-SLAPP motion to August 19, 2021," and August 16, 2021 -- .4 hours billed for "prepare for Anti-SLAPP hearing by engaging

CourtCall," should have been .1 each, as the described tasks should have taken less than six minutes. The two time entries for August 20, 2021 -- .3 hours for reviewing the court's minute order taking the matter under submission then adopting the tentative ruling with no changes, and .2 for "review minute order that [sic] Court taking matter under submission" are duplicative as well as excessive. Purely clerical or secretarial tasks should not be billed at a lawyer's usual rate. (*Missouri v. Jenkins* (1989) 491 U.S. 274, 288, fn. 10.) Calendaring, preparing proofs of service, internal filing, preparing binders for a hearing, and scanning are examples of tasks that have been found to be purely clerical and thus noncompensable or compensable at a greatly reduced billing rate. (*Save Our Uniquely Rural Community Environment v. County of San Bernardino* (2015) 235 Cal.App.4th 1179, 1187; *Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d 975, 991.) Accordingly, the court deducts .9 hours from the lodestar calculation.

Reasonable Hourly Compensation

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type." (*Ketchum v. Moses*, supra, 24 Cal.4th at p. 1133.) Ordinarily, " 'the value of an attorney's time . . . is reflected in his normal billing rate.' " (*Mandel v. Lackner* (1979) 92 Cal. App. 3d 747, 761.)

Defense counsel Elvin Tabah was admitted to the bar in December of 2012. He does not disclose what his contractual hourly billing rate was in this matter. Nor does he state what his customary billing rate was in 2021. He does, however, opine that his hourly rate "should be at least \$650 per hour" based on the Laffey matrix and historical billing rates in the San Francisco Bay Area and Los Angeles.

A rate of \$650 per hour is significantly higher than the local rates for a ten-year lawyer. The use of the higher rates for out-of-town counsel as the basis for compensation "requires a sufficient showing . . . that hiring local counsel was impracticable." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) A plaintiff need only make "a good-faith effort to find local counsel" in order to justify the fees of out-of-town counsel. (*Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2010) 190 Cal.App.4th 217, 249; *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.)

There is no showing that any local attorneys were consulted or considered. As such, the court sets an hourly rate of \$400. Accordingly, attorney's fees of \$35,720 are awarded (89.3 hours x \$400).

Costs

Counsel requests costs of \$1,589.82.² This total includes the \$60.00 motion fee, a CourtCall fee of \$94.00 for the hearing on the anti-SLAPP motion, a fee of \$33.20 for filing the reply and proof of service electronically, a fee of \$45.14 for overnight service of the motion and a fee of \$1,357.48 for "filing fees for Anti-SLAPP motion." Postage is not a

² Counsel also requested an additional CourtCall fee of \$94.00 for the hearing on this fee motion. As the motion is unopposed, the fee will not be necessary.

recoverable cost. (Code Civ. Proc., §1033.5, subd. (b)(3).) Accordingly, the court awards costs in the amount of \$1,544.68.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG on 5/10/2022.
(Judge's initials) (Date)